

## Article 26.

### Modification and Enforcement of Dispositional Orders; Appeals.

#### **§ 7B-2600. Authority to modify or vacate.**

(a) Upon motion in the cause or petition, and after notice, the court may conduct a review hearing to determine whether the order of the court is in the best interests of the juvenile, and the court may modify or vacate the order in light of changes in circumstances or the needs of the juvenile.

(b) In a case of delinquency, the court may reduce the nature or the duration of the disposition on the basis that it was imposed in an illegal manner or is unduly severe with reference to the seriousness of the offense, the culpability of the juvenile, or the dispositions given to juveniles convicted of similar offenses.

(c) In any case where the court finds the juvenile to be delinquent or undisciplined, the jurisdiction of the court to modify any order or disposition made in the case shall continue (i) during the minority of the juvenile, (ii) until the juvenile reaches the age of 19 years if the juvenile has been adjudicated delinquent and committed to the Division for an offense that would be a Class B1, B2, C, D, or E felony if committed by an adult, other than an offense set forth in G.S. 7B-1602(a), (iii) until the juvenile reaches the age of 21 years if the juvenile has been adjudicated delinquent and committed for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree forcible rape pursuant to G.S. 14-27.21, first-degree statutory rape pursuant to G.S. 14-27.24, first-degree forcible sexual offense pursuant to G.S. 14-27.26, or first-degree statutory sexual offense pursuant to G.S. 14-27.29 if committed by an adult, or (iv) until terminated by order of the court. (1979, c. 815, s. 1; 1998-202, s. 6; 2000-137, s. 3; 2011-145, s. 19.1(l); 2015-181, s. 30.)

#### **§ 7B-2601. Request for modification for lack of suitable services.**

If the Division finds that any juvenile committed to the Division's care is not suitable for its program, the Division may make a motion in the cause so that the court may make an alternative disposition that is consistent with G.S. 7B-2508. (1979, c. 815, s. 1; 1998-202, s. 6; 2000-137, s. 3; 2011-145, s. 19.1(l).)

#### **§ 7B-2602. Right to appeal.**

Upon motion of a proper party as defined in G.S. 7B-2604, review of any final order of the court in a juvenile matter under this Article shall be before the Court of Appeals. Notice of appeal shall be given in open court at the time of the hearing or in writing within 10 days after entry of the order. However, if no disposition is made within 60 days after entry of the order, written notice of appeal may be given within 70 days after such entry. A final order shall include:

- (1) Any order finding absence of jurisdiction;
- (2) Any order which in effect determines the action and prevents a judgment from which appeal might be taken;
- (3) Any order of disposition after an adjudication that a juvenile is delinquent or undisciplined; or
- (4) Any order modifying custodial rights. (1979, c. 815, s. 1; 1998-202, s. 6.)

#### **§ 7B-2603. Right to appeal transfer decision.**

(a) Notwithstanding G.S. 7B-2602, any order transferring jurisdiction of the district court in a juvenile matter to the superior court may be appealed to the superior court for a hearing on the record. Notice of the appeal must be given in open court or in writing within 10 days after entry of the order of transfer in district court. Entry of an order shall be treated in the same manner as entry of a judgment under G.S. 1A-1, Rule 58 of the North Carolina Rules of Civil Procedure. The clerk of superior court shall provide the district attorney with a copy of any written notice of appeal filed by the attorney for the juvenile. Upon expiration of the 10 day period in which an appeal may be entered, if an appeal has been entered and not withdrawn, the clerk shall transfer the case to the superior court docket. The superior court shall, within a reasonable time, review the record of the transfer hearing for abuse of discretion by the juvenile court in the issue of transfer. The superior court shall not review the findings as to probable cause for the underlying offense.

(b) **(Effective until December 1, 2019)** Once an order of transfer has been entered by the district court, the juvenile has the right to be considered for pretrial release as provided in G.S. 15A-533 and G.S. 15A-534. The release order shall specify the person or persons to whom the juvenile may be released. Pending release, the court shall order that the juvenile be detained in a detention facility while awaiting trial. The court may order the juvenile to be held in a holdover facility as defined by G.S. 7B-1501 at any time the presence of the juvenile is required in court for pretrial hearings or trial, if the court finds that it would be inconvenient to return the juvenile to the detention facility.

(b) **(Effective December 1, 2019)** Once an order of transfer has been entered by the district court, the juvenile has the right to be considered for pretrial release as provided in G.S. 15A-533 and G.S. 15A-534. Any detention of the juvenile pending release shall be in accordance with G.S. 7B-2204.

(c) If an appeal of the transfer order is taken, the superior court shall enter an order either (i) remanding the case to the juvenile court for adjudication or (ii) upholding the transfer order. If the superior court remands the case to juvenile court for adjudication and the juvenile has been granted pretrial release provided in G.S. 15A-533 and G.S. 15A-534, the obligor shall be released from the juvenile's bond upon the district court's review of whether the juvenile shall be placed in secure or nonsecure custody as provided in G.S. 7B-1903.

(d) The superior court order shall be an interlocutory order, and the issue of transfer may be appealed to the Court of Appeals only after the juvenile has been convicted in superior court. (1979, c. 815, s. 1; 1998-202, s. 6; 1999-309, s. 2; 1999-423, s. 2; 2017-57, s. 16D.4(k).)

#### **§ 7B-2604. Proper parties for appeal.**

(a) An appeal may be taken by the juvenile, the juvenile's parent, guardian, or custodian, a county, or the State.

(b) The State's appeal is limited to the following orders in delinquency or undisciplined cases:

- (1) An order finding a State statute to be unconstitutional; and
- (2) Any order which terminates the prosecution of a petition by upholding the defense of double jeopardy, by holding that a cause of action is not stated under a statute, or by granting a motion to suppress.

(c) A county's appeal is limited to orders in which the county has been ordered to pay for medical, surgical, psychiatric, psychological, or other evaluation or treatment of a juvenile pursuant to G.S. 7B-2502, or other medical, psychiatric, psychological, or other evaluation or

treatment of a parent pursuant to G.S. 7B-2702. (1979, c. 815, s. 1; 1998-202, s. 6; 2003-171, s. 1.)

**§ 7B-2605. Disposition pending appeal.**

Pending disposition of an appeal, the release of the juvenile, with or without conditions, should issue in every case unless the court orders otherwise. For compelling reasons which must be stated in writing, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile or the State. (1979, c. 815, s. 1; 1987 (Reg. Sess., 1988), c. 1090, s. 12; 1998-202, s. 6.)

**§ 7B-2606. Disposition after appeal.**

Upon the affirmation of the order of adjudication or disposition of the court by the Court of Appeals or by the Supreme Court in the event of an appeal, the court shall have authority to modify or alter the original order of adjudication or disposition as the court finds to be in the best interests of the juvenile to reflect any adjustment made by the juvenile or change in circumstances during the period of time the appeal was pending. If the modifying order is entered ex parte, the court shall give notice to interested parties to show cause within 10 days thereafter as to why the modifying order should be vacated or altered. (1979, c. 815, s. 1; 1998-202, s. 6.)